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10/691,385	10/22/2003	Charles G. Hwang	102-539 CIP (P-6048/1)	8673
32752 7590 10/28/2009 David W. Highet, VP & Chief IP Counsel Becton, Dickinson and Company (Hoffman & Baron) 1 Becton Drive, MC 110 Franklin Lakes, NJ 07417-1880				
EXAMINER				
WITCZAK, CATHERINE				
ART UNIT		PAPER NUMBER		
3767				
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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/691,385  
Filing Date: October 22, 2003  
Appellant(s): HWANG ET AL.

\_\_\_\_\_  
Ludomir A. Budzyn  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 7/15/2009 appealing from the Office action mailed 1/15/2009.

Art Unit: 3767

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

2,585,527	ADAMS	2-1952
4,535,906	ROWEKAMP	8-1985
D457,954	WALLACE ET AL	5-2002

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 1, 2, 8, 9, 11, 12, 14, 15, 16, 22, 23, 24, 28, 31-34, 37 and 38 are rejected under 35 U.S.C. 102(b) as being anticipated by Adams (US 2,585,527).

Adams discloses in Figures 1, 2, and 8 a tip cap for a syringe (11) having a tip, the cap comprising a base (17), a body (13) having a textured top wall comprising a plurality of ribs (34) and an elliptical cross-section, and a shaft (12) having a helical thread shaped internally to match the syringe tip, wherein medicament within the syringe is accessible through the tip of the syringe with removal of the tip cap.

2. Claims 1, 2, 8, 9, 11, 12, 14, 15, 16, 22, 23, 24, 28, 31-34, 37 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wallace et al (US D457,954) as modified by Rowekamp (US 4,535,906).

Wallace et al disclose in Figure 1 a tip cap for a syringe having a tip, the cap comprising a base, a body having a textured top wall comprising a plurality of ribs, and a shaft having a helical thread shaped internally to match the syringe tip.

Wallace et al disclose the claimed invention except for the body having a non-circular cross-section. Rowekamp discloses in Figure 1 a cap (30) having a body (36) with a non-circular cross-section. It would have been obvious to one having ordinary skill in the art at the time the invention was made to

modify the device of Wallace et al with an elliptically shaped body as taught by Rowekamp, since such a modification would provide the device with an easier gripping shape providing better torque when opening/closing the cap.

#### **(10) Response to Argument**

In regards to the Adams reference, Appellant argues that the device of Adams is not a medical syringe and thus does not disclose the claimed invention. Examiner disagrees. In prior office actions, Examiner pointed Appellant to the definition of syringe as provided by Merriam Webster Online dictionary, which is: “a device used to inject fluids into or withdraw them from something.” And though Appellant may argue that the limitation ‘medical syringe’ imparts distinguishing features from a standard “syringe,” Examiner points out that even medical dictionaries, such as MedlinePlus (<http://www.nlm.nih.gov/medlineplus/plusdictionary.html>) define a syringe in exactly the same terms: “a device used to inject fluid into or withdraw them from something.” Furthermore, despite Appellant’s arguments that Adams does not disclose the container being used with a medicament, Examiner points Appellant to column 4, lines 23-30 where Adams discloses the device being used with toothpaste containers (wherein, due to the fact that toothpaste contains ingredients such as fluoride, it is considered a medicament). Though the components of the syringe of Adams may not structurally resemble Appellant’s syringe, Examiner maintains that the device of Adams - which dispenses (ie injects) its contents (such as toothpaste) into something (eg the bristles of a toothbrush) when element 11 is squeezed - thus fully meets the definition of a syringe. Appellant further argues that the Adams reference does not disclosed the claimed invention because Adams does not disclose the cap defining a continuous and uninterrupted sealing surface which contains the medicament with the syringe, the medicament only being accessible through the tip of the syringe by removal of the tip cap. Firstly, Examiner would like to point out that there is no support in the specification, drawings, or claims as originally filed that the medicament is *only*

accessible through the rip of the syringe by removal of the tip cap, and that furthermore, the wording of the limitation in the claims is "the medicament within the syringe being accessible through the tip of the syringe with removal of said tip cap". As such, it is the Examiner's position that Appellant's arguments that Adams does not disclose this feature are irrelevant as the limitation is not present in the claims. As to Appellant's arguments that the slit (15) in the cap of Adams prevents the device of Adams from meeting the limitations drawn to a cap which seals the tip of the syringe and contains the medicament within the syringe, Examiner argues that while slit 15 does provide access to the contents of Adams device even while the cap is covering the syringe tip, when the device is not in use and the cap (13) is in an unbiased state (such as shown in Figure 6), the slit remains closed, providing a continuous uninterrupted sealing surface which seals the tip of the syringe to contain the medicament therein.

In regards to Examiner's rejection of the claims as obvious over Wallace as modified by Rowekamp, Appellant argues that with any hypothetical combination of Rowekamp and Wallace et al the lower, not upper portion of Wallace et al would be modified by have the shape of the skirt (36) disclosed by Rowekamp. Examiner disagrees. The Rowekamp reference teaches a cap having two sections: a section (37) which is used to attach the cap to the container, and a noncircular portion (36) which is gripped by the user when attaching the cap to the container. Wallace et al disclose a device also comprising two sections: a lower portion used to attach the cap to the syringe and an upper portion which the user would grasp when attaching the tip to the syringe. Thus, it is the Examiner's position that it would be obvious that when combining the teaching of Rowekamp to the device of Wallace et al, it would be obvious to one having ordinary skill in the art at the time the invention was made to modify the *upper* portion (not the lower portion as argued by Applicant) of Wallace et al with the *upper* noncircular portion of Rowekamp in order to provide the cap with an easier gripping shape which provide better torque when opening/closing the cap.

Art Unit: 3767

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Catherine Witczak

/Catherine N Witczak/

Examiner, Art Unit 3767

Conferees:

/Kevin C. Simons/

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